PUBLIC PROSECUTOR

v.

CHEN MEAU LIM

HIGH COURT MALAYA, JOHOR BAHRU
MOHD. YUSOFF MOHAMED J
[CRIMINAL TRIAL NO. 1 OF 1983]
27 JULY 1985

CRIMINAL LAW AND PROCEDURE: *Dangerous drugs - Trafficking - Dangerous Drugs Act 1952, ss. 39B(1)(a), 39B(2) - Amendment of charges.*

The accused was charged with two offences for trafficking dangerous drugs, both contrary to s. 39B(1)(a) of the Dangerous Drugs Act 1952 (Revised 1980) and punishable under s. 39B(2). The 1st charge relates to his possession of 177.3 grammes of heroin at a junction in Johore Bahru and the 2nd charge relates to his custody or control of 574.9 grammes of heroin in a house in Johore Bahru. At the end of the prosecution's case, Counsel for the accused submitted that the essential ingredients of the case have not been proved, basing this on the tests and analyses carried out by the Government Chemist. Counsel for the accused then required the amendment of the charges.

Held:

[1] The principle enunciated in the Singapore case of *Haw Tua Tau* [1981] CLJ (Rep) 11 is that every essential ingredient of the alleged offence must be proved before the accused's defence is called and this has been consistently applied by our Courts.

[2] On the present facts, it is not shown by any evidence in what manner the Chemist's evidence was inadequate. The Court found that the tests were properly made.

[3] The purported discrepancy of the amount of drugs involved (19.011 grammes) cannot be accepted as correct. Even if there was such a discrepancy, it does not prejudice the accused's case as the amounts shown in the charges were less than they should be. In any event, in view of the presumption in s. 37(da) the discrepancy does not derogate the offence to a lesser charge. It is therefore not necessary to amend the charges.

[4] On the evidence as a whole, the accused's story is flimsy and unreliable. The accused has also not rebutted the presumptions in s. 37(b) & (d) of the Act.

[5] Because of the large quantity of drugs recovered from the accused and because there are no extenuating circumstances to impose a lesser punishment, the accused is sentenced to death.

[Accused convicted and sentenced to death.]

Case referred to:
Haw Tua Tau v. P.P. [1981] CLJ (Rep) 11

Legislation referred to:
Criminal Procedure Code FMS (Cap 6), s. 180
Criminal Procedure Code [Sing], s. 188(1)
Dangerous Drugs Act 1952, ss. 37(b), (d), 37(da), 39B(1)(a), (2)

For the public prosecutor - Tuan Yacob bin Atan (DPP)
For the accused - Karpal Singh; M/s. Karpal Singh & Co. assisted by Teh Poh Teik; M/s. Abd. Raman Saad and Associates

JUDGMENT

Mohd. Yusoff Mohamed J:

The accused Chen Meau Lim was charged with two offences for trafficking dangerous drugs on 26 September 1982, both contrary to s.39B(1)(a) of the Dangerous Drugs Act 1952 (Revised 1980) and punishable under s. 39B(2) thereof.

The 1st charge relates to his possession of 177.3 grammes of heroin at 9.45 a.m. at the junction of Jalan Kebun Teh/Tebrau in Johore Bahru and the 2nd charge relates to his custody or control of 574.9 grammes of heroin at 10.30 a.m. the same day in a house at No. 30, Jalan Semenanjung Taman Penggawa Barat, Tampoi, Johore Bahru.

On the first charge the prosecution adduced evidence showing that the accused was arrested by Insp. Rosly and his party of police officers in actual possession of the drugs - Exhibit P3. The accused was alighting from his motor-car in front of a shop known as Universal Motors holding a plastic bag containing a brown package in which it was found to contain the drugs. There was nobody else in the motor car.

During the search of the accused person, it was found on him two electric bills, one of which refers to a house at No. 30, Jalan Semenanjung, Taman Penggawa Barat, Tampoi, Insp. Rosly and his party went to the house in the company of the accused. The accused let them into the house after opening the main door with his key. In the house accused unlocked the doors to the 1st and 2nd room with his set of keys - Exhibit P8. Accused lived in the 1st room and the 2nd room was empty except for 2 pieces of planks leaning against the wall. Behind these planks, Insp. Rosly prised open the lock. In the bag he found 5 brown packages similar to Exhibit P3 which contained the drugs - Exhibit P5A to P5E. This is the subject of the 2nd charge.

The Government Chemist, Qua Sai Chuan carried out 3 different types of tests on Exhibits P3 and P5A to E. He found that they are heroin as defined in s. 2 of the Dangerous Drugs Act. Exhibit P3 contained 177.3 grammes of heroin and Exhibit P5A to E contained 574.9 grammes of similar drugs. In cross-examination, the Chemist admitted that in his methods of analysis there might be errors which in this particular case the maximum error would be 0.6% only. This error in his opinion is negligible. Under further cross-examination he said that he arrived at the quantity of heroin in each package by determining the percentage of heroin in the package and multiplied it by the nett weight of the substance.

At the end of the prosecution's case, Mr. Karpal Singh referring to *Haw Tua Tau's* case [1981] CLJ (Rep) 11, submitted that the essential ingredients of the case have not been proved. Firstly there is no adequate evidence on the test carried out by the Chemist. Secondly, there are discrepancies totalling 19.011 grammes more than the amount of drugs involved in both charges when calculated according to the formula given by the Chemist. This he said requires the amendment of the charges. On the second charge, he urged that the accused was not in occupation of the 2nd room at the material time.

Haw Tua Tau's case deciding on s. 188(1) of the Singapore Criminal Procedure Code (our s. 180 Criminal Procedure Code FMS Cap . 6) is not strange in our Courts. This principle enunciated there that every essential ingredient of the alleged offence must be proved before the accused's defence is called has been consistently applied in our Courts without fail.

In the present case, it is not shown by evidence in what manner the Chemist's evidence is not inadequate. The Chemist has described the type of tests he carried out on the exhibits and how he came to his conclusion. These types of tests have so far been accepted by our Courts. I am satisfied that these tests were properly made.

The purported discrepancy of the amount of drugs involved which should be 19.011 grammes more than those shown in the charges, though admitted by the learned Deputy Public Prosecutor and based on the mathematical calculation, cannot in my view be accepted as correct. The Chemist was not questioned on this alleged discrepancy. His calculation was not challenged. Even if there was such a discrepancy which I do not agree, it does not prejudice the accused's case as the amounts shown in the charges were less than they should be. In any event, in view of the presumption in s. 37 (da), the discrepancy does not derogate the offence to a lesser charge. For these reasons I do not find it necessary to amend the charges.

On the contention of accused not in occupation of the 2nd room where the drugs in the 2nd charge were recovered, the presumptions in s. 37 (b) & (d) are relevant. The accused had not only the management of the whole premises, he also held a key to the door of the 2nd room. On this basis his defence was called.

The accused's defence is one of denial. He denied that the drugs, Exhibit P3 were recovered from him when he was arrested. He said that he saw Insp. Rosly bring out the plastic bag containing P3 after searching his motor-car. He also saw the Inspector had 2 sets of keys belonging to him. They were keys to the 1st and 2nd room for house No. 30 at Jalan Semenanjung.

On the 2nd charge, accused denied that he was in occupation of the room of the house at No. 30 Jalan Semenanjung where Exhibit P5 were recovered though he admitted that he had 2 sets of keys to the room. He said that he had earlier rented the room to Ah Seng (PW10) and had given one set of keys to the room to him. He said Ah Seng also arranged to sell his motor-car to a customer and instructed him to drive it to the petrol kiosk at the junction of Jalan Kebun Teh after Ah Seng had driven the motor-car the previous night.

The accused's line of defence clearly implies that the drugs Exhibits P3 and P5 belonged to Ah Seng who had been his tenant at No. 30 Jalan Semenanjung. But this witness (PW10) called by the prosecution denied that he ever lived in the house nor knew about the Samsonite bag containing the drugs P5, recovered there. He said that he knew accused casually at the gaming halls.

The defence produced two witnesses, one testifying that Accused had a registered commission agent as his business and another his girl friend, Mary Ong Ah Chan who testified that accused had actually rented the 2nd room at house No. 30 Jalan Semenanjung to Ah Seng. She also said that accused gave only 1 set of keys to Ah Seng and kept another set to himself.

On the evidence as a whole I find that the accused's story is flimsy and unreliable. On the 1st charge, PW10 was not cross-examined about Exhibit P3 allegedly recovered from motor-car nor evidence adduced to show that the motor-car had been in possession of PW10 or somebody else before he had driven it.

On the 2nd charge, I find that the accused has not rebutted the presumptions in s. 37 (b), (d) of the Act. His defence that he was not in control of the 2nd room where Exhibits P5A to P5E were recovered is in my view not reasonable and probable. It is not reasonable to believe that accused had rented the room to Ah Seng and yet kept one set of keys of the room to himself.

On these evidence I find the accused guilty of both charges. He was convicted.

Because of the large quantity of the drugs recovered from him and because there are no extenuating circumstances to impose a lesser punishment, I consider that I would fail in my duty if the sentence of death is not passed on the accused.

Also found at [1986] 1 CLJ 214